IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.182 OF 2004

SKF Bearings (I) Ltd. ..Applicant

Vs.

Harish Banarasilal Madan
& Anr. ..Respondents

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Mr.S.S.Parab Advocate for Applicant
Mr.A.P.Mundergi, Sr.Counsel i/b Ms.Manisha Patil
Advocate for Respondent nos.1 and 2
Mr.Y.S.Shinde A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 26,2005

P.C.

1. Heard the learned advocate for the applicant i.e. original complainant, the learned senior counsel for respondent nos.1 and 2 i.e. original accused and the learned A.P.P. for the State.

2. The respondent nos.1 and 2 are facing prosecution in C.C.No.2/S/2002 which was pending before the learned Addl.Chief Metropolitan Magistrate, 3rd Court Esplanade, Mumbai (Now

numbered as 316/SS/2005 and pending before the learned Metropolitan Magistrate, 23rd Court, Esplanade Mumbai). In the said case, the learned Magistrate issued process under Section 138 r.w. 141 of Negotiable Instruments Act. The learned Sessions Judge by order dated 4.6.2003 recalled the said process. Being aggrieved by the said order, this revision has been preferred. The process came to be recalled mainly on the ground that the amount of cheque i.e. Rs.5,20,983-34 is not correctly mentioned in the Demand Notice as required under the Act and the amount demanded is Rs.5,28,983-34.

3. In the present case, it is seen that in the complaint the amount in question has been correctly mentioned as 5,20,983-34. So also in the verification statement before the Magistrate, the complainant has mentioned the same amount. In the notice in question the amount is mentioned at four different places. In three places the amount is mentioned as Rs.5,20,983-34 and only in one place i.e in para no.9 the amount of Rs.5,28,983-34 has been mentioned. In my opinion, on perusal of notice as a whole, it does not in any manner convey

an incorrect picture. On perusal of the notice dated 9.2.2001, it is noticed that in para nos.3,4 and 7 the amount of the cheque in question is clearly mentioned as Rs.5,20,983-34 and it is only in para no.9 that the amount is mentioned as Rs.5,28,983-34 ps. The learned advocate for the applicant has submitted that it is only on account of typographical error that instead of Rs.5,20,983-34 the amount is mentioned as Rs.5,28,983-34 in para no.9.

4. The learned counsel for the respondent has relied upon the decision of the Supreme Court in the case of **Suman Sethi Vs. Ajay K.Churiwal and Anr.** reported in **2000 Cri.L.J. 1391.** In the said decision, it is observed that the demand has to be made for the cheque amount. Mr.Mundergi has submitted that the cheque amount was Rs.5,20,983-34 ps. however, the demand in the notice was for Rs.5,28,983-34 ps. and no such amount of Rs.5,28,983-34 ps. was due and payable by the accused persons to the complainant and hence, it cannot be said that it was a proper notice. He has further submitted that if the demand is for a

lesser amount or higher amount not covered by the cheque which was dishonoured then the prosecution must fail as the statutory requirement of Section 138(b) of the Negotiable Instruments Act was not fulfilled. In support of this contention, he has placed reliance on the decision of Andhra Pradesh High Court in the case of **M/s. Yankay Drugs and Pharmaceuticals Ltd. Vs M/s. Citi Bank** reported in **2001 DCR 609.** I have already observed earlier that on perusal of the notice as a whole, it cannot be said that the demand was for Rs.5,28,983-34. In this view of the matter, the order of the learned Sessions Judge recalling process only on the basis of this ground is clearly erroneous and hence, the said order deserves to be set aside and is accordingly set aside.

. Application is disposed of.

[V.K.TAHILRAMANI,J.]